BEFORE THE

Federal Communications Commission

WASHINGTON, D.C.

In the Matter of	)	
	)	
Implementation of the Cable Television Consumer Protection and Competition Act of 1992	)	MM Docket No. 92-260
	)	
Cable Home Wiring	)	
	)	
Telecommunications Services Inside Wiring	)	CS Docket No. 95-184
	)	
Customer Premises Equipment	)	

COMMENTS OF TELE-COMMUNICATIONS, INC.

WILLKIE FARR & GALLAGHER
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20036
(202) 328-8000

Its Attorneys

March 18, 1996

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C.

In the Matter of	)	
	)	
Implementation of the Cable Television Consumer Protection and Competition Act of 1992	)	MM Docket No. 92-260
	)	
Cable Home Wiring	)	
	)	
Telecommunications Services Inside Wiring	)	CS Docket No. 95-184
	)	
Customer Premises Equipment	)	

COMMENTS OF TELE-COMMUNICATIONS, INC.

Tele-Communications, Inc. ("TCI") hereby files its comments with respect to the two Notices in the above-captioned proceedings.[1]

I. INTRODUCTION AND SUMMARY

When the Commission adopted the two Notices on inside wiring in December 1995, it was focused on harmonizing the rules governing cable and telephone inside wiring and customer

---

[1] In the Matter of Telecommunications Services, Inside Wiring and Customer Premises Equipment, CS Docket No. 95-184 (released January 26, 1996) ("Harmonization Notice") and In the Matter of Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Cable Home Wiring, MM Docket No. 92-260 (released January 26, 1996).

equipment as a means of reducing consumer confusion and promoting competition among broadband distributors. Since then, the U.S. Congress enacted the Telecommunications Act of 1996, establishing new federal policy for telecommunications services and information services. The Harmonization Notice is inconsistent with the new federal law, which relies on regulatory asymmetry, rather than regulatory harmony, to achieve a competitive communications landscape.

In light of Congress's sweeping revision of telecommunications policy, TCI respectfully urges the Commission to defer any action on the inside wiring Notices and to focus its efforts on implementing the proceedings that are mandated by the 1996 Act. After the Commission completes these congressionally required proceedings, it would be in a better position to assess what, if anything, needs to be done to alter its telco or cable inside wiring rules to further carry out congressional intent.

This approach is especially warranted in light of the rapid convergence of the telecommunications and cable industries. Given this dynamic transformation, it is inevitable that any attempt to alter the inside wiring rules at this point would create uncertainty and skew efficient market outcomes. Moreover, such rules would ultimately need to be rewritten after the convergence process matures and the marketplace "settles down."

At the very least, the Commission should defer consideration of these issues until they can be merged into related proceedings required by the 1996 Act.

II. THE COMMISSION'S PRE-1996 ACT HARMONIZATION NOTICE IS INCONSISTENT WITH NEW FEDERAL LAW.

In February, Congress adopted the first comprehensive overhaul of national communications policy in over 60 years. As the Commission is well aware, Congress mandated literally dozens of specific rulemakings that the Commission must undertake to implement Congress's new federal regulatory policy for telecommunications services and information services.

However, nothing in the Act or in the legislative history requires or even contemplates the harmonization of telco and cable inside wiring as a means to implement this new federal policy. To the contrary, such an approach is at odds with this new federal policy. The Congress has adopted an approach to broadband service competition that is designed to provide incentives to facilities-based providers to enter new telephony markets and new video markets. Congress anticipates head-to-head competition between cable operators and telephone companies. To accomplish this result, it has relied on regulatory asymmetry, rather than regulatory harmony. For example, the Act: (1) repeals the statutory ban on telephone-company provision of video services in the telco service area; (2) prohibits mergers and acquisitions of co-located telephone companies and cable systems; and (3) allows telephone companies to enter the video market free from rate regulation and with immediate access to branded cable programming (indeed, if a LEC chooses to build an open video system, it is spared the regulatory burdens of the

local franchising process that continue to be imposed on cable operators). Similarly, under the Act, cable operators may provide telephony under lighter regulatory burdens than those borne by "incumbent LECs."

Congress specifically addressed and rejected regulatory harmony with respect to access to physical plant. Under the new law, cable operators have complete rights to interconnect with the LEC's network in order to provide telephone service,[2] while a telephone company may interconnect with a cable operator's network in order to provide video only with the concurrence of the cable operator, and then only under limitations that the Commission must adopt in a separate rulemaking.[3]

The Commission's sole source of statutory authority over cable inside wiring flows from the 1992 Cable Act, which sought to ensure that customers have reasonable opportunities to purchase inside wiring within their premises when they voluntarily terminate cable service.[4] The Commission's existing regulations already adequately address this statutory requirement.[5]

---

[2] See 1996 Act, new §§ 251(b), (c).

[3] See id. new § 652(d)(2).

[4] See Communications Act, § 624(i).

[5] The suggestion in the Harmonization Notice to extend the MDU demarcation point far away from the subscriber's unit (aside from directly contravening the plain language of the 1992 Cable Act) is inconsistent with Congress's preference embodied in the 1996 Act for facilities-based competition. See, e.g., 1996 Act § 271(c)(1)(A) (requiring the presence of a facilities-based competitor prior to allowing the BOCs to enter the long distance

III. THE COMMISSION SHOULD FOCUS ITS RESOURCES ON CARRYING OUT THE ACTIVITIES TO PROMOTE COMPETITION THAT ARE SPECIFICALLY REQUIRED BY THE 1996 ACT.

While none of the congressionally-required rulemakings under the 1996 Act contemplates the harmonization of inside wiring rules, the substantial number of specific obligations which the Act does establish for the Cable and Common Carrier Bureaus -- the bureaus with shared responsibility for the Harmonization Notice -- and the limited resources the Commission has to address these issues[6] suggest that the Commission defer its consideration of the inside wiring Notices. TCI respectfully recommends that the Commission focus its attention and efforts on the critical proceedings which Congress specifically identified as requirements for implementing its new federal policy. The Commission will not be able to adequately address how telco and cable inside wiring rules should change, if at all, to implement the new federal communications policy until it completes the specific rulemakings required by the Act.

(..continued)
business). The current cable MDU demarcation point is consistent with federal policy in that it allows cable competitors access to cable's wiring and enables cable operators to continue to offer other broadband services (such as Internet access) to subscribers (without having to rebuild a substantial portion of their plant) even though an alternative MVPD may be providing the subscriber's video service.

[6] The Commission has suggested recently that it will be a difficult task to implement the 1996 Act given the numerous proceedings which the Act specifically requires the Commission to undertake and the limited funds available to the Commission to implement them. See, e.g., "Hollings backs Larger FCC Budget," Communications Daily, March 3, 1996, at 6.

Finally, there is even less support for such non-congressionally mandated proceedings at this time given that the Commission has just completed an extensive three-year reconsideration of its cable home wiring rules, and, after deliberating over a substantial record established through numerous comments, ex parte presentations, and an en banc hearing, the Commission decided not to alter the current cable demarcation point. Nothing has changed since this recent decision that would warrant or justify the devotion of Commission resources to this set of issues, particularly at this critical juncture in the implementation of the 1996 Act.

IV. ALTERING THE CABLE OR TELCO INSIDE WIRING RULES DURING THIS PERIOD OF DYNAMIC CONVERGENCE COULD HAVE INADVERTENT NEGATIVE EFFECTS.

As an initial matter, the Harmonization Notice oversimplifies the notion that "harmonizing" the telco and cable rules will eliminate confusion. For example, the MDU demarcation point for telco inside wiring is anything but straightforward. Depending on when the MDU was constructed and what the standard operating practices of the particular telephone company is or was at a given point in time, the telco MDU demarcation point can be anywhere from the minimum point of entry to 12 inches inside the individual unit. Given such an elusive demarcation point, harmonization of the inside wiring rules might actually increase confusion by consumers and alternative providers.

More fundamentally, as complicated as the telco inside wiring rules are, they were crafted in a very stable environment: little had changed with the telco twisted pair for decades. However, the use of coaxial cable for telephony, as well as other convergence opportunities, presents a far more dynamic and unstable environment. For example, a recent Washington Post article described the "flavor-of-the-month" nature of the approaches that have been pursued by Bell Atlantic within the last year with respect to the use of different types of wiring and various technologies to deliver an array of new services.[7] Changing the rules while the technological choices are still being sorted out will impose costs and uncertainties on distributors, and even possibly skew the choices made. In addition, after the markets "shake out," the rules would likely need to be changed yet again. While the Commission is correct to try to adjust regulatory rules to apply equitably to similarly-situated entities, changing them now could in fact produce unintended consequences that might significantly impact business plans and the roll out of new services.[8]

---

[7] See "Making Copper a Bit Faster; Bell Atlantic Puts the Pedal to the Metal for Internet Access," Washington Post, February 22, 1996, at D9 (describing Bell Atlantic's changing focus over the past year on the use of plant and technology -- from ADSL over copper wire to fiber-to-the-curb to wireless microwave and back to ADSL over copper).

[8] There is recent Commission precedent for this approach. For example, the Commission deferred the imposition of a general interstate interconnection obligation on all CMRS providers because it decided that such a requirement was premature in light of the fact that CMRS is "undergoing rapid change in terms of

At the very least, the commission should defer these issues until they can be merged with other rulemakings that are required by the 1996 Act. Among these required rulemakings are several which raise issues that are related to the inside wiring and equipment issues raised in the Notices. For example, the rulemaking required by section 304 on commercial availability of navigation devices implicates many of the equipment issues raised in the Harmonization Notice. Similarly, the rulemakings required by new section 652(d)(2) on telco use of the cable drop and by section 703 on access to pole attachments implicate wiring, pricing, and access issues that are similar to issues raised in the inside wiring Notices. Especially given the ambitious deadlines imposed by the Act and the Commission's stated intent to streamline these proceedings in part by avoiding redundant pleadings, it makes eminent sense for the Commission to defer consideration of the issues raised in the inside wiring Notices at the very least until they can all be addressed at the same time in a proceeding required by the 1996 Act.

Combining consideration of the Notices with proceedings that are specifically required by the 1996 Act is also consistent with the fundamental nature of the Notices, which are more akin to Notices of Inquiry in that they pose numerous questions and seek information on a broad range of complex issues, while providing

(..continued)
technology and facilities employed." See CMRS Interconnection Proceeding, 10 F.C.C.R. 10666 (1995).

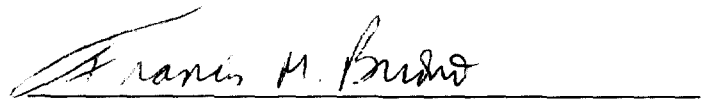
little insight into the Commission's proposed regulatory treatment of or tentative conclusions about these issues.

CONCLUSION

Based on the foregoing, TCI respectfully urges the Commission to defer action in the two inside wiring Notices until it completes the proceedings specifically required by the 1996 Act. At the very least, the Commission should defer consideration of these issues until they can be merged into related proceedings required by the Act. Finally, the Commission should approach the question of changing inside wiring rules cautiously, given that any alteration of the rules could have significant negative impacts on existing business plans and potentially skew market outcomes in the highly dynamic and converging communications markets.

Respectfully submitted,

TELE-COMMUNICATIONS, INC.



Michael H. Hammer
Francis M. Buono

WILLKIE FARR & GALLAGHER
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20036

Its Attorneys

March 18, 1996